As Mrs. Thompson now holds the legal estate by deed from her father, and is in possession of the property, her title will be quieted, and a decree may be entered for that purpose, agreeably to the prayer of the petitioner.

District Court of the United States—District of Kentucky.

THE UNITED STATES *v.* FIFTY-SIX BARRELS OF WHISKEY.

Where a statute in direct terms denounces a forfeiture of property as a penalty, the forfeiture takes place at the time the offence is committed, and operates as a statutory transfer of the right of property to the government.

In a proceeding *in rem* to ascertain the forfeiture, it is not material whether the statute declares that the *property* shall be forfeited, or that the *offender* shall forfeit it. In either case the date of the offence is the time to which the forfeiture relates.

Therefore in a proceeding for condemnation of whiskey for violation of sect. 68 of the Internal Revenue Act of 30th June 1864, the fact that the whiskey had passed into the hands of a *bonâ fide* purchaser before the commencement of the suit will not avail the claimant.

Nor is it material that before such purchase the whiskey had been regularly branded by a United States inspector.

Where such purchaser has, for the purpose of rectification, mixed the whiskey forfeited with other whiskey, so that it is not capable of identification, the whole is liable to forfeiture.

THIS was a proceeding for the condemnation of fifty-six barrels of whiskey and certain stills and other vessels, as forfeited to the United States.

The information was founded on the 68th section of the Internal Revenue Act of 1864, and contained two counts.

The first count alleged, in substance, that one William E. Reed was the owner of said stills and other vessels, and used the same in the distillation of spirits continuously from September 1865 until the seizure herein, and that he had used said stills and vessels in the distillation of the fifty-six barrels of whiskey seized, but he did not, from day to day, make or cause to be made, in a book kept for that purpose, a true and exact entry of the number of gallons so distilled, or of the number sold or removed for consumption or sale.

The second count alleged that said Reed, owner of said stills and vessels used by him in the distillation of spirits, did not render to the assessor or to the assistant-assessor, on the 1st,

11th, and 21st days of each and every month, or within five days thereafter, or on the first day of each month, an account in duplicate, taken from his books, of the number of gallons of spirits distilled, or the number sold or removed for consumption or sale.

Twenty-two of the barrels seized were claimed by William H. Walker & Co., three were claimed by Gheens & Co., and the remaining thirty-one, together with the stills and other vessels, not having been claimed by any one, were condemned by default.

The claimants filed separate answers, but the defence of each was substantially the same. Both denied every substantial allegation contained in the information, and both alleged that they purchased the whiskey claimed by them respectively before the seizure, *bonâ fide*, and that they paid for the same a full and fair consideration, without any knowledge or suspicion of the alleged forfeiture or cause of forfeiture. They also both alleged substantially, that the whiskey was, at the time of the purchase, regularly and legally branded by plaintiff's inspector.

The case was, by agreement of parties, submitted to the court upon the law and facts, a jury being waived.

BALLARD, D. J.—I shall neither state nor discuss the facts proven. My conclusion in respect to these is, that every substantial allegation of the information is true, and that no part of the matter set up in the answers, in support of the claims, is sustained by the evidence except: 1st. That the barrels of whiskey purchased by the claimants had been regularly branded by the United States inspector prior to the purchase. 2d. That the claimants are *bonâ fide* purchasers, without any notice of, or cause to suspect, the alleged forfeiture.

These facts present the following questions for my decision, to wit: First. Does the information set forth a good cause of forfeiture? Second. Have the claimants supported their claims? that is, do the facts alleged and proven by them constitute any reason why the forfeiture should not be enforced?

The 57th and 68th sections of the Internal Revenue Act furnish a complete answer to the first question.

The 57th section makes it the duty of "every person who shall be the owner of any still, boiler, or other vessel used * * * * for the purpose of distilling spirituous liquors * * * * and of every person who shall use any still, boiler, or other vessel as aforesaid,

either as owner, agent, or otherwise, from day to day, to make a true and exact entry, or cause to be entered in a book kept for that purpose, the number of gallons of spirits distilled * * * * and also the number sold or removed for consumption or sale."

The first count, we have seen, alleges a neglect of the duty here enjoined.

This section also provides, that every such person, if he distill one hundred and fifty barrels of spirits per year, or more, shall render the assessor or assistant-assessor, on the first, eleventh, and twenty-first days of each and every month in each year, or within five days thereafter, an account in duplicate, taken from his books, of the number of gallons of spirits distilled, and also the number of gallons sold or removed for consumption or sale, and that he shall pay the taxes on such spirits at the time of rendering the duplicate account thereof. If he distill less than one hundred and fifty barrels per year, he may make his returns and pay duties on the first day of every month.

The second count of the information avers a neglect of this duty.

The 68th section provides "That the owner, agent, or superintendent of any * * * * * * still, boiler, or other vessels used in the distillation of spirits, on which a duty is payable, who shall neglect or refuse to make true and exact entry of the same, or to do, or cause to be done, any of the things by law required to be done as aforesaid, shall forfeit, for every such neglect or refusal, all the * * spirits made by or for him, * * * and the stills, boilers, and other vessels used in distillation, together with the sum of five hundred dollars, * * * * * * which said spirits, with the vessels containing the same, with all the vessels used in making the same, may be seized by any collector or deputy-collector of internal duties, and held by him until a decision shall be had thereon, according to law. * * * And the proceeding to enforce said forfeiture of said property shall be in the nature of a proceeding *in rem*."

It is manifest that the information does, in apt form and in apt language, set forth neglects of duty for which a forfeiture is denounced by the express terms of this section. This is conceded by the learned counsel of the claimants. They admit that the property seized must be condemned as forfeited if the facts

established by the claimants are not sufficient to show that, as to the property claimed by them, there never was any forfeiture.

In respect to the first fact established by the claimants, that is, that the barrels were regularly branded by the United States inspector before they purchased, it is clear that it furnishes no answer to anything alleged in the information. Besides the duties which are enjoined by the 57th section, the neglect of which is alleged in the information, the 59th section requires "That all spirits distilled as aforesaid by any person licensed as aforesaid shall, before the same are used or removed for any purpose, be inspected, gauged, and proved by some inspector appointed for the performance of such duties." If the information had alleged a removal of the spirits distilled before inspection, the fact that the barrels were branded before removal would have been material. It, however, not only furnishes no answer to the charges set out in the information, that no entry was made from day to day, in a book kept for that purpose, of the number of gallons of spirits distilled, or the number removed for consumption or sale, and that no return was made to the assessor, such as is required by law, but it has not the slightest relation to either of them. This is conceded by the counsel of the claimants. They do not rely on this fact as precluding a condemnation. They treat it simply as one of the facts which show that the claimants acted in good faith and are *bonâ fide* purchasers, and, as I have already announced that I am satisfied, upon the whole case, that the claimants are such purchasers, it is wholly immaterial for me to state what influence I have given to this single fact in arriving at the more general conclusion of the good faith of the claimants. If the barrels had not been branded by an inspector this would have been a most material fact, if an effort had been made to show bad faith, but no such effort has been made. That the claimants were innocent purchasers is established, and is not, in fact, contested by the United States, and, therefore, the fact of the barrels being branded is entitled to no consideration whatever.

This brings me to the consideration of the main question in the case. Does the fact that the claimants purchased the whiskey claimed by them *bonâ fide*, and without any knowledge or suspicion of the alleged cause of forfeiture, preclude a judgment of condemnation? This is a very important question, whether it be considered in reference to the citizen or to the government. It

has been argued before me with great ability, and I have bestowed upon it much reflection.

The general law of property is, that the true owner may recover it of any one who has it in possession, no matter whether the possessor be a *bonâ fide* purchaser or not. The law which protects *bonâ fide* holders of bills of exchange and other negotiable paper has no relation to property generally. Every purchaser of merchandise or other property risks, in a certain sense, the title of his vendor, and, if it turns out that his vendor has no title and the property be recovered of him, he has no remedy except on the warranty of the vendor. It follows that, if when Walker & Co. and Gheens & Co. purchased the whiskey claimed by them, their vendor had no title—that is, if it had already been forfeited to the United States, the fact that they are *bonâ fide* purchasers cannot avail them. Their good faith cannot oust the claim of the true owner. They are exactly in the condition of every *bonâ fide* purchaser of property whose title fails and who is therefore obliged to surrender it to the owner. They must look to the warranty of their vendor.

Indeed, I have difficulty in perceiving that the *bona fides* of the purchase is at all material, or that it has any relation to the grounds of forfeiture alleged in the information. If the forfeiture took place prior to their purchase, it is undisputed and indisputable that the right of property was immediately transferred to the United States, and that the right of the latter must prevail over that of the purchaser, notwithstanding the purchase was made in good faith.

The right of the United States in such case depends not at all on the conduct of the purchaser, but upon their own superior title, resulting from a forfeiture which took place prior to any inception of right in the purchaser.

If there was no forfeiture prior to the acquisition of right by the claimants, whether the right was acquired by purchase for a valuable consideration or by gift, I am at a loss to conceive how there was any forfeiture at all. I cannot see how property, whether acquired by gift or purchase, can be condemned as forfeited for the offence of its former owner, which was not already forfeited at the time of the gift or purchase. If the acquisition be by pretended gift or pretended purchase, in such sense that the title is not changed, but really remains in the first owner,

then, of course, his offence committed after the pretended gift or sale may work a forfeiture. But neither the Internal Revenue Act nor any other Act of Congress forfeits property for the crime of a person which does not belong to him, or is not managed by him at the *time* of the forfeiture. Property is sometimes forfeited in consequence of the act of some person who manages or controls it other than the owner, but the forfeiture does not extend to property previously managed or controlled, and which, before being contaminated with the offence, is sold or otherwise parted with in good faith.

The question then comes to this: When does the forfeiture denounced by the 68th section take place? Does it take place at the time the offence is committed, or at some subsequent time?

The decisions are uniform, both in England and the United States, that when a *statute* denounces a forfeiture of property as the penalty for the commission of crime, if the denunciation is in direct terms, and not in the alternative, the forfeiture takes place at the time the offence is committed, and operates as a statutory transfer of the right of property to the government: *Roberts* v. *Witherhead*, 12 Modern Rep. 92; Salkeld 223; *Wilkins* v. *Despard*, 5 T. R. 112; *United States* v. 1960 *Bags of Coffee*, 8 Cranch 398; *The Mars*, Id. 417; *Gelsten* v. *Hoyt*, 3 Wheat. 311; *Wood* v. *United States*, 16 Peters 362; *Caldwell* v. *United States*, 8 Howard 381.

The case of *The United States* v. 1960 *Bags of Coffee* arose under the 5th section of the Non-Intercourse Act of March 1809, 2 Stat. at Large 529, which provides "That whenever any article * * * the importation of which is prohibited by this act, shall, after the 20th of May, be imported into the United States * * * or be put on board of any ship or vessel, boat, raft, or carriage, with intention of importing the same into the United States * * * all such articles, as well as all other articles on board of the same ship or vessel, boat, raft, or carriage belonging to owner of such prohibited articles, shall be forfeited, and the owner shall, moreover, forfeit and pay treble the value of such articles."

The claimants made precisely the same plea which Walker & Co. and Gheens & Co. make in this case; that is, they alleged that they were *bonâ fide* purchasers for a valuable consideration. The case was most ably and elaborately argued, but the Supreme

Court overruled the plea and held that by the terms of the statute the forfeiture took place upon the commission of the offence, and the purchaser was not protected. It will be perceived that this statute does not fix the time at which the forfeiture is to take place in more explicit terms than does the statute under which the present case arises. The one declares that *whenever* any article shall be imported it shall be forfeited, *and that the owner shall forfeit other property*, and the other declares that the owner, agent, or superintendent, &c., * * * who shall neglect to make true and exact entry and report, or to do any of the things required by law, shall forfeit, &c. If the forfeiture under the Act of 1809 takes place at the time of the commission of the offence, so as to override the title of all subsequent purchasers, and this, we have seen, the Supreme Court have expressly decided, I can conceive of no argument which would not refer the forfeiture under the Act of 1864 to the same time, or which would not invest the forfeiture with the same consequences.

The case of *Gelsten* v. *Hoyt*, 3 Wheat. 311, involved a construction of the Neutrality Act of 1794, 1 Stat. at Large 383, the third section of which declares a forfeiture of vessels fitted out and armed to be employed in the service of a foreign state in committing hostilities against the citizens, subjects, or property of another foreign state with whom the United States are at peace. The court say "the forfeiture must be deemed to attach *at the moment of the commission of the offence*, and consequently from that moment the title of the plaintiff would be completely divested so that he could maintain no action for the subsequent seizure. This is the doctrine of the English courts, and it has been recognised and enforced in this court upon very solemn argument."

The case of *Caldwell* v. *The United States* involved, in part, the construction of the 68th and 66th sections of the Collection Act of 1799, 1 Stat. at Large 677, the latter of which declares a forfeiture in the alternative, that is, of the goods *or* their value, and the former declares it without any alternative.

The inferior court had instructed the jury "that if the goods were fraudulently entered, it is no matter in whose possession they were when seized, or whether the United States had made an election between the penalties, and that the forfeiture took place when the fraud, if any, was committed, and the seller of the goods could convey no title of the goods to the purchaser."

The Supreme Court say: "This instruction is partly right and partly wrong: right in respect to the 68th section, as the penalty is a forfeiture of the goods without an alternative of their value; wrong as the instruction applies to the 66th section, the forfeiture under it being 'either the goods or their value.'

"*In the first the forfeiture is the statutory transfer of right to the goods at the time the offence is committed.* If this was not so, the transgressor against whom, of course, the penalty is directed, would often escape punishment and triumph in the cleverness of his contrivance by which he has violated the law. The title of the United States to the goods forfeited is not consummated until after judicial condemnation, but the right to them relates backwards to the time the offence was committed, so as to avoid all intermediate sales of them between the commission of the offence and the condemnation.

"So this court said in the case of *United States* v. 1960 *Bags of Coffee*, 8 Cranch 398. It was said again in the case of *The United States* v. *Brigantine Mars*, 8 Cranch 417. Declared again, four years afterwards, in *Gelsten* v. *Hoyt*, 3 Wheat. 311, in these words: 'The forfeiture must be deemed to attach at the moment the offence is committed, so as to avoid all sales afterwards.'"

There is, we have seen, no *alternative* in the 68th section of the Internal Revenue Act of 1864. The forfeiture of the spirits, stills, boilers, and other vessels used in distillation, is by it directly declared. Its construction is, therefore, fixed by the decisions to which I have referred, almost as certainly and conclusively as if its provisions had been the direct subject of adjudication. The conclusion to my mind, then, is irresistible, that the forfeiture denounced by this section, to use the language of the Supreme Court, "takes place at the time of the commission of the offence, so as to avoid all sales afterwards."

It is just to the learned counsel of the claimants to say, that they concede this would be the correct construction of the section if it had, in so many words, declared that the spirits, &c., should be forfeited. They say that the statute does not declare that the spirits, &c., shall be forfeited, but that the *owner*, *agent*, or *superintendent* shall forfeit them, and that this difference of language requires a difference of construction.

Their argument is extremely refined, and is difficult to state.

If I understand them, they contend, that there is a difference between the construction of a statute which denounces a forfeiture of specific property as the penalty of an offence, and one which declares that the offender shall forfeit it. In the first case they concede that the forfeiture takes place at the time of the commission of the offence, whilst in the latter they insist it does not take place until seizure, conviction, or judgment. No adjudged case or other authority has been cited in support of this distinction, and I am unable to conceive any good reason for upholding it. What ground is there for referring the forfeiture to the time of seizure? There must have been a previous forfeiture to authorize a seizure. The seizure is the *consequence* of the forfeiture, not the *cause*. Nor do I see any reason for referring the forfeiture to the time of conviction or judgment. The conviction and judgment are simply the consummation of the proceeding that the law requires to be instituted to ascertain the fact or forfeiture of which the seizure is the beginning.

If the statute made the forfeiture the consequence of the *personal* conviction of the offender, in which case there is no seizure, or if it even required a personal trial and conviction to precede judgment of forfeiture, there might be some force in the argument of the learned counsel founded on forfeitures at common law in cases of treason and felony. I admit that, at common law, there was no forfeiture of the goods and chattels of a felon until he was convicted; but, under that law, no penalty whatever could be inflicted for the crime of felony except in cases of suicide, flight, and perhaps a few other analogous cases, until after the personal conviction of the offender, and in the excepted cases the forfeiture related to the time of the offence. When the felon was convicted, death was the penalty, and judgment of death followed. A forfeiture of goods and chattels was a *consequence* of the conviction, and a forfeiture of real estate a consequence of the judgment; but forfeiture was no part of the judgment. Here, however, we are not trying the offender at all, or, if at all, only incidentally. He is not personally before the court, and cannot in this proceeding be convicted. The statutes under which we are proceeding do not make the forfeiture the consequence of his *conviction*, but of his offence, which offence it authorizes to be inquired into by a seizure of, and proceeding against, the property itself. Having ascertained that offences were committed, I cannot

in this proceeding render any judgment against the offender; I can only render a judgment of condemnation of property, which judgment is merely the judicial ascertainment of the fact that the property was previously forfeited.

When a statute declares that an offender shall forfeit property as the penalty of his offence, and authorizes a proceeding *in rem* to ascertain the forfeiture, I am satisfied that the forfeiture takes place at the time of the commission of the offence just as certainly as it does when the statute directs, not that the offender shall forfeit, but that the property itself shall be forfeited. There is a distinction between common-law and statutory forfeitures. Common-law forfeitures, except in cases of deodand, suicide, flight, and perhaps a few others, were the *consequence* of the conviction or of judgment against the felon, and followed his personal trial; but statutory forfeitures are usually enforced by proceeding against the thing, and relate to the time of the commission of the offence. This distinction is recognised by the Supreme Court in the case of *The United States* v. *Grundy et al.*, 3 Cranch 337, and other cases. They say "when the forfeiture is given by statute the rules of the common law may be dispensed with, and the thing forfeited may either vest immediately or on the performance of some particular act, as shall be the will of the legislature." When there is no alternative in the statute, when it directly declares a forfeiture, and no time subsequent to the committing of the crime is named at which the forfeiture is to take effect, the settled rule, we have seen, is, that it relates to the time of the commission of the offence.

Whether the statute declares a forfeiture of property as the consequence of crime, or that the person who commits the crime shall forfeit it, the effect is the same. In either case the immediate loss falls on the owner. Whether the forfeiture is in consequence of his own unlawful act, or of the unlawful act of some other person, respecting the thing forfeited, the loss is still his, and his only. It is he who in fact forfeits or loses—no matter in what language the forfeiture is declared. By the terms of the statute we are now considering, the *agent* or *superintendent* who uses stills, boilers, or other vessels in the distillation of spirits, and who neglects to do the things enjoined by law, forfeits as well as the *owner*. But the agent is not owner, and literally he cannot forfeit what he does not own. He may cause its forfeiture by

his unlawful act, but he cannot lose what is not his. Therefore, when the statute declares that the agent or superintendent shall forfeit the stills, boilers, and other vessels, it must be understood to mean that these articles shall be forfeited in consequence of his neglect of duty. And, if this be its meaning, even the learned counsel of the claimants would concede, that the consequence and effect of the forfeiture are that the title to the thing forfeited passes instantly upon the commission of the offence.

I observe that the learned judge of the Eastern District of Missouri treats this 68th section as if it read, that the owner of the *spirits* shall forfeit them. And on this reading he seems to have founded his conclusion that the owner does not forfeit what he sells before seizure. He says: "that as 'the owner,' &c., shall forfeit, and not the purchaser, the owner can forfeit only what belongs to him." It may be conceded that the owner can forfeit only what belongs to him, but I do not see that this helps the argument; for, if the forfeiture takes place, as I have shown it does, at the time the offence is committed, it is not necessary to claim that he forfeits more than what then belongs to him. If he forfeits *that*, the title of the United States immediately takes effect and prevails over that of all purchasers: *United States* v. 396 *Barrels*, 3 Internal Revenue Recorder 123.

An attentive examination of the section, however, will show that, by its terms, it is not the owner of the *spirits*, but the owner, agent, or superintendent of the *stills*, *boilers*, *or other vessels*, used in the distillation of spirits, who forfeits. It is the neglect to perform a prescribed duty by any one who uses stills, boilers, or other vessels in the distillation of spirits, whether as owner, or simply as agent or superintendent, which produces the forfeiture; and what are forfeited are the stills, boilers, and other vessels, and the spirits made by or for him. If the agent forfeits only what "belongs to him," he forfeits nothing, for the stills, boilers, and other vessels and spirits do not belong to him. They belong to the principal. But the statute says the agent who neglects, &c., shall forfeit these things, and there are no means of escaping a provision so express. The statute, then, must mean that these things shall be forfeited for the agent's neglect, or as to him it is inoperative, and has no meaning at all. And, if they are forfeited for his neglect, surely the forfeiture takes effect the moment of neglect. There is no other period to which it can possibly be referred.

I have great respect for the opinions of the learned judge who decided the case of *The United States* v. 396 *Barrels*, above referred to. I have not ventured to differ from him until after the fullest consideration and the clearest conviction. I cannot but think his decision is based on a misreading of the statute, as well as on a misconception of adjudged cases. The conclusion to which I have arrived is, I think, sustained by a recent unreported opinion of the learned judge of the Southern District of Ohio, in the case of *The United States* v. *Sixteen Hogsheads of Tobacco*, and by the uniform decisions of the Supreme Court of the United States; and I have not a doubt of its correctness.

I need not say that I have arrived at my conclusion reluctantly. I have examined every provision of the statute; I have attentively considered the 180th section, and every section which declares a forfeiture, and I think that the provisions of each and all of them confirm the construction of the 68th section which is here adopted. It would be a much more pleasing task for me to order a restoration of the property seized to the innocent claimants than to adjudge its condemnation, if I could do so consistently with my sense of duty. I have been literally forced to a decision in spite of my personal inclination by a current of authorities which is irresistible.

Judgment of condemnation must be entered.

The counsel of Walker & Co., however, ask that the judgment be limited to nineteen of the barrels claimed by them, and that the other three seized in their possession be restored. This motion is based on the following state of facts:—

The twenty-two barrels of spirits claimed by Walker & Co. are part of a lot of thirty-seven barrels purchased at the same time. Only thirty-two of the barrels were distilled by William E. Reed, mentioned in the information. Five were distilled by some one else, and as to them there is neither proof nor allegation that there was any violation of law. If these five barrels remained and could be identified as among those seized, they would be restored, of course. But Walker & Co. mixed the whole thirty-seven barrels together in the process of rectifying, and, after rebarrelling and selling a portion of the compound, the twenty-two barrels seized remain, so that it is now impossible to *identify* any of the spirits which were not distilled by William E. Reed. It is possible, and perhaps probable, that five thirty-seventh parts of the twenty-two barrels, or about three barrels in quantity,

were not distilled by him. But it cannot be alleged with absolute certainty that any part of the five barrels remain. All that can be said is that it is probable. And if any part of them remain, it is, of course, impossible to separate that part from the rest.

If, then, I restore to Walker & Co. three barrels, those barrels will contain some whiskey which has been forfeited, and, therefore, belongs to the United States. I have no right thus to dispose of the property of the United States. I have no right to make an equitable division between them and the claimants. I am obliged to give to the United States all the spirits which are shown to be theirs. If the claimants, by mixing their own whiskey with that of the United States, have rendered it impossible to identify theirs, they must suffer the consequence of their own act. They made the mixture, it is true, in perfectly good faith, in the regular exercise of their trade and business, and believing that the whole of the whiskey belonged to them; still, by their act they have put it out of their power to give to the United States only what belongs to them. They are obliged, by force of a well-known rule of law, to surrender to the plaintiffs *all* that belongs to them; although in so doing they may be obliged to give up some that belongs to themselves.

If one intermixes his goods with those of another, without his knowledge or consent, so that they cannot be identified, the law does not allow him any remedy, but gives the entire property, without any account, to him whose original dominion or property is invaded (2 Blackstone's Com. 405).

The order of condemnation must therefore include the whole of the thirty-two barrels. Nor does this decision work in this case any real hardship. The United States are actually entitled to thirty-two barrels of the whiskey purchased by Walker & Co. They claim in this suit only twenty-two, leaving with Walker & Co. ten or the proceeds of ten, which are not claimed and may never be claimed.

In concluding this opinion, I adopt what the Supreme Court of the United States said in announcing their decision in a similar case:—

"It is true that cases of hardship and even absurdity may be supposed to grow out of this decision; but, on the other hand, if, by a sale, it is put in the power of an offender to purge a forfeiture, a state of things not less absurd will certainly result from it.

When hardships shall arise, provision is made by law for affording relief under authority much more competent to decide on such cases than this court ever can be.

"In the eternal struggle that exists between the avarice, enterprise, and combination of individuals on the one hand, and the power charged with the administration of the laws on the other, severe laws are rendered necessary to enable the executive to carry into effect the measures of policy adopted by the legislature."

RECENT ENGLISH DECISIONS.

Exchequer Chamber.

LOCKE *v.* FURZE.[1]

The plaintiff, being in possession under an old lease, had an *interesse termini* under a reversionary lease of the same premises from the same lessor. Before the expiration of the original lease, V., claiming under the lessor by a good title, repudiated the reversionary lease, and subsequently granted to the plaintiff a lease for a shorter term at an increased rent.

Held (affirming the judgment of the Court of Common Pleas), that the ordinary rule of law, that on a breach of contract the person injured is entitled to be put in the same position as that in which he would have been had the contract been fulfilled, applied; and that therefore the plaintiff was entitled to recover the difference between the value of the reversionary lease and that granted by V., although he had never entered under the reversionary lease.

Flureau v. *Thornhill*, 2 Wm. Bl. 1077, distinguished.

APPEAL from a judgment of the Common Pleas discharging a rule calling upon the plaintiff to show cause why the verdict found for him should not be set aside and be entered for the defendant, and why the damages should not be reduced to a nominal sum.

In the court below a demurrer to one of the pleas was argued with the rule, and judgment on the demurrer was given to the defendant. Error had not been assigned upon that judgment, and the appeal was now argued alone.

The case is fully reported 13 W. R. 971, 34 L. J. C. P. 201.

Garth, for the appellant.—The sum paid into court is sufficient

[1] *Coram*—POLLOCK, C. B., BLACKBURN and MELLOR, JJ., MARTIN, CHANNELL, and PIGOTT, BB.